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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,384	02/01/2001	Guido Maurizio Oliva	3572-27	3979

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EXAMINER

KIM, AHSHIK

ART UNIT PAPER NUMBER

2876

DATE MAILED: 09/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/773,384

Applicant(s)

OLIVA, GUIDO MAURIZIO

Examiner

Ahshik Kim

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06/19/03 (Amendment).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02/01/01 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Amendment*

1. Receipt is acknowledged of the amendment filed on June 19, 2003. In the  
5 amendment, claims 1, 16, 17, and 35 were amended, and claim 37 was newly added.  
Currently, claims 1-37 remain for examination.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that  
10 form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public  
use or on sale in this country, more than one year prior to the date of application for patent in the United  
States.

15 3. Claims 1-17 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by  
Metlitsky et al. (US 5,233,170).

Re claims 1-17 and 35, Metlitsky et al. disclose an optical device for emitting a  
laser light beam comprising a source of a laser light beam including a package 10 and  
20 means 22 for generating the laser light beam housed within the package 10, the package  
10 being provided with a laser light beam emission window 14 (fig. 1; col. 4, line 40  
through col. 5, line 23) defining an aperture having a Fresnel focusing lens 200, which  
serves as a diaphragm (figs. 9 & 10; col. 8, lines 49+) which selects a central portion of  
the laser light beam and is directly associated to/housed in the package 10 at the laser  
25 light beam emission window 14; a photodiode 28 and collecting lens 38 serves as  
photo-detecting/receiving means to collect a luminous signal diffused by the illuminated

Art Unit: 2876

optical code and generate an electrical signal and a processing means 50 (col. 5, line 34 through col. 6, line 40; col. 7, lines 28+; especially col. 6, lines 18-40).

***Claim Rejections - 35 USC § 103***

- 5     4.     The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

10                     (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

5.     Claims 18-34, 36, and 37 are ejected under 35 U.S.C. 103(a) as being unpatentable over Metlitsky (US 5,233,170) in view of Gurevich et al. (US 5,969,323).
- 15     The teachings of Metlitsky have been discussed above.

Metlitsky fails to specifically teach or fairly suggest that light emitting source and light receiving device is optically separated.

Gurevich teaches an optical reader wherein light sources such as laser diode 3 and light sensor 8 are optically separated (see figure 1; col. 4, lines 54+).

- 20             In view of Gurevich's teaching, it would have been obvious to an ordinary skill in the art at the time the invention was made to incorporate a scanner structure wherein outgoing beam and reflected beams do not meet in order to capture correct images without noise and therefore reduce errors resulting from such noise. Although Gurevich does not provide a structural barrier between light source and light receptor, outgoing
- 25     beams and reflected beams, as shown in figure 1, do not overlap, reading on the subject matter disclosed in 18, 36, and 37. As disclosed in other references, separating outgoing beam and incoming beams is a well-known method and widely used in optical reader.

Art Unit: 2876

Accordingly, incorporating such feature is well within the ordinary skill in the art, and therefore an obvious expedient.

5

*Response to Arguments*

6. The Applicant's amended claims and arguments filed on June 19, 2003 have been carefully reviewed and considered.

The Applicant amended claims such that they now have a diaphragm which selects a central portions of the laser light beam so that only the central portion of the  
10 laser light beam is propagated while a remaining portion of the laser light beam is  
obstructed;.....". In doing so, Applicant argues that the claims currently presented overcomes the teachings of the Metlitsky patent.

The Applicant further argues that the Metlitsky patent does not disclose nor suggest any package which comprises a diaphragm for selecting .....(page 11, 2<sup>nd</sup>  
15 paragraph).

The Examiner respectfully disagrees with Applicants assertion on following reasons: First, Metlitsky discloses a package 10 comprising a diaphragm 200. As shown in the figures 3-6, items 38, 36, and 34 can be considered a diaphragm. Diaphragm is defined as "2: a dividing membrane or thin partition esp. in a tube" or "4: a device that  
20 limits the aperture of a lens or optical system" (Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> edition). In view of the above, such items (38, 34, and 36) further including lens 200 are diaphragms.

Art Unit: 2876

With respect to the Applicant's argument regarding claims 18-34, 36, and 37, a new reference is cited for treating first portion and second portion recited in claims 18, 36, and 37. For dependent claims 19-34, it is the Examiner's view that the Metlitsky patent still teaches the subject matter recited in these claims. Since the Examiner agrees  
5 with the Applicant's position regarding claims 18-34, 36, and 37, this Office Action is made non-final.

### Conclusion

I. The prior art made of record and not relied upon is considered pertinent to  
10 applicant's disclosure: Campanelli et al. (US 6,024,283); Froese-Peeck et al. (US 6,039,254); Lebens (US 5,745,176); Itoh et al. (US 5,811,778) disclose optical readers.

II. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Ahshik Kim* whose telephone number is (703)305-5203 . The examiner can normally be reached between the hours of 6:00AM to 3:00PM Monday  
15 thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (703) 305-3503. The fax number directly to the Examiner is (703) 746-4782. The fax phone number for this Group is (703)308-7722, (703)308-7724, or (703)308-7382.

20 Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [ahshik.kim@uspto.gov].

*All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a  
25 possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.*

30 Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

35 

Ahshik Kim

Application/Control Number: 09/773,384

Page 6

Art Unit: 2876

Patent Examiner

Art Unit 2876

September 2, 2003



**DIANE I. LEE**  
**PRIMARY EXAMINER**